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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,350	01/30/2002	Jean-Marie Badoz	MICROM6	1148

7590

08/12/2003

Gary M Cohen
Strafford Building Number Three
Suite 300
125 Strafford Avenue
Wayne, PA 19102

EXAMINER

BUMGARNER, MELBA N

ART UNIT PAPER NUMBER

3732

DATE MAILED: 08/12/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/049,350

Applicant(s)

BADOZ, JEAN-MARIE

Examiner

Melba Bumgarner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-30 is/are pending in the application.
- 4a) Of the above claim(s) 16-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-15 and 26-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Specification

1. The substitute specification filed May 30, 2003 has been entered.

Election/Restrictions

2. Applicant's election of Invention II and Species A, new claims 10-15 and 26-30 in Paper No. 6 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 16-25 are withdrawn from further consideration as being drawn to a nonelected invention and species.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 15 and 26-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 15 and 28-30, it is unclear if the "cartridge" is intended to be positively claimed as an element of the apparatus. In claim 26, it is unclear if the "root-canal instrument" is intended to be positively claimed. In claim 27, it is unclear if the "filling material" is intended to be positively claimed.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 10-14, 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by McSpadden (5,067,900). McSpadden discloses an apparatus 72 comprising at least one recess 84 and a heater 76 (figure 3). Patentable weight is not given to inferentially claimed elements that the apparatus may be used with such as the filling material and cartridge. As to claims 11 and 12, McSpadden shows the recess formed in a heat-conducting element 76, the heat-conducting element is a heat-conducting heating body, the heater is a resistive electric element coupled with the body (column 4 line 65 - column 5 line 4). As to claim 13, McSpadden shows a plurality of recesses formed in the body. As to claim 14, the recesses are coupled with a single heater. As to claim 26, although not positively claimed, the root-canal instrument 22 is a condenser 22. As to claim 27, although not positively claimed, the filling material is gutta percha 42.

7. Claims 10-15, 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Riazi (5,215,461). Riazi discloses an apparatus comprising at least one recess 45 and a heater 23. Patentable weight is not given to inferentially claimed elements that the apparatus may be used with such as the filling material and cartridge. As to claims 11 and 12, Riazi shows the recess formed in a heat-conducting element 76, the heat-conducting element is a heat-conducting heating body, the heater is a resistive electric element coupled with the body (figure 2). As to claim 13, Riazi shows a plurality of recesses 50, 51, 52 (figure 12). As to claim 14, the recesses are coupled with a single heater. As to claim 15, although not positively claimed, the cartridge is an elongate

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vessel having a longitudinal axis, the recess is shaped to receive the vessel so that the longitudinal axis is in a substantially vertical orientation. As to claims 27, although not positively claimed, the filling material is gutta percha 29. As to claims 28 and 30, although not positively claimed, the cartridge is a hollow vessel 41 fitted with a sealed closure 46 and the vessel is formed of a plastic material (column 4 line 49). As to claim 29, patentable weight is not given to inferentially claimed elements.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Riazi in view of Berk et al. Claim 29 is rejected under 35 U.S.C. 102(b) above; however, this rejection is additionally made to show the structure of the cartridge. Riazi discloses an apparatus that shows the limitations as described above; however, Riazi does not show the cartridge as in claim 29. Berk et al. teach a cartridge of resin material having a hollow vessel, the vessel is a cylinder having an integral bottom at one end and sealed closure at an opposite end (column 4 line 66). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cartridge of Riazi with the closures of Berk et al. to eliminate the possibility of contaminating the material as taught by Berk et al.

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Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Roane (5,286,193) is cited to show the state of the art with respect to a cartridge containing a dose of filling material.

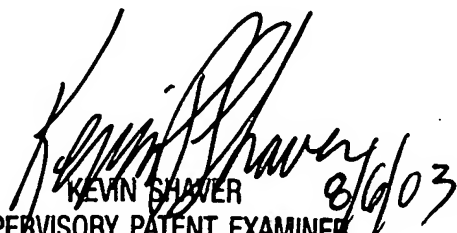
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melba Bumgarner whose telephone number is 703-305-0740. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-308-2708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



Melba Bumgarner



KEVIN SHAVER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

8/6/03